

CITY OF CHARLOTTESVILLE
"A World Class City"



Office of the City Attorney
City Hall P.O. Box 911 | 605 East Main Street
Charlottesville, Virginia 22902
Telephone: (434) 970-3131
Fax: (434) 970-3022
www.charlottesville.org

November 1, 2019

Brown, Edwards & Company, LLP
319 McClanahan Street, S.W.
Roanoke, VA 24014

Confidential & Privileged

RE: City of Charlottesville - Request for Audit Information
Fiscal Year Ending June 30, 2019

Dear Sir or Madam:

By letter to me from Christopher Cullinan, the City's Director of Finance, dated September 19, 2019, received by me on September 19, 2019, our office was asked to identify certain pending or threatened litigation, and certain unasserted claims and assessments, which would relate to your audit for the year ending June 30, 2019. He asked that our response cover material matters as to which our office has been engaged or to which we have devoted substantive attention on behalf of the City in the form of legal consultation or representation. He also asked that our response include matters that existed on June 30, 2019, and those matters arising between that date and the date of our response.

The essence of Mr. Cullinan's request is that we identify "material matters" (items involving amounts exceeding \$100,000 individually or items involving lesser amounts which exceed \$100,000 in the aggregate). This direction is intended to eliminate suits and claims that are so small that they are extremely unlikely to have any adverse effect on the City's fiscal integrity. Given the City's existing general liability insurance coverage¹, and the legal and factual exigencies of each lawsuit, we doubt that any one pending suit is likely to have a substantial adverse effect on the City's fiscal integrity. However, to be conservative and consistent with your \$100,000 definition of materiality, we will report almost every lawsuit against the City that seeks monetary damages. We will omit what we consider at this time to be very minor or frivolous claims that have yet to become lawsuits. In accord with the instructions,

¹ The City is insured under the Virginia Risk Sharing Association (formerly VML Insurance Programs) for general liability, police enforcement activities, and public officials' errors and omissions coverage in the amount of \$1,000,000 per occurrence plus a \$10,000,000 umbrella policy, with no deductible.

definitions, and descriptions contained in Mr. Cullinan's letter and for the time period delineated above, we respond as follows:

Reporting Date: November 1, 2019
PENDING OR THREATENED LITIGATION
(excluding unasserted claims and assessments)

A. SUITS FILED

Dickerson Homes and Development LLC v. City Planning Commission, et al.

Dickerson Homes filed suit in the Charlottesville Circuit Court on June 10, 2016 against the City, its Planning Commission, and the Director of Neighborhood Development Services because in April 2016 the Planning Commission denied approval of Dickerson's site plan for a proposed development. The suit also alleged that the site plan denial was a violation of Dickerson's due process rights, and requested an unspecified amount of damages. The Complaint was served on the City on October 6, 2016. Virginia Risk Sharing Association (hereinafter "VRSA") appointed the law firm of Zunka, Milnor & Carter as defense counsel for the City, and they filed a demurrer seeking a dismissal of the action. To date Dickerson has not taken any action to prosecute this case. In my opinion, any settlement or judgment will not exceed the limits of the City's insurance coverage.

Frederick W. Payne, et al. v. City of Charlottesville

Nine individuals and two organizations filed suit in Charlottesville Circuit Court against the City of Charlottesville, the Charlottesville City Council, and five current and former City Councilors, in their individual capacities. Plaintiffs are aggrieved by a decision of City Council adopting Resolutions directing the removal of Confederate statues from two downtown parks, and calling for redesign of the parks. The lawsuit seeks declaratory and injunctive relief, monetary damages, and attorneys' fees under a state law (Va. Code §15.2-1812, §15.2-1812.1) that makes it unlawful for the authorities of a locality to disturb or interfere with certain war memorials (including "Confederate monuments") and that authorizes an action for damages if any such war memorial is violated or encroached upon. VRSA was notified and provided defense counsel until the limits of the City's coverage were reached (in 2017). Thereafter, the City Attorney's office, assisted by outside counsel, has defended the City and City Council; separately, the individual city councilors were represented pro bono by the law firm Jones Day. The individual city councilors were dismissed from the suit in 2019. The case went to trial in September 2019 against the City of Charlottesville and Charlottesville City Council (entity). The trial court awarded declaratory and injunctive relief in favor of the Plaintiffs. The trial court determined that Plaintiffs failed to prove damages that could be awarded under §15.2-1812.1; nonetheless, the court ruled that it will award litigation costs and reasonable attorneys' fees to the Plaintiffs. As of the date of this letter, the court has not determined the amount of litigation costs and attorneys' fees to be awarded. (At trial, the Plaintiffs requested an award of \$604,038, total. No recovery of attorneys' fees or litigation costs will be covered by insurance.)

Robert Sanchez Turner v. Al Thomas, Jr. and City of Charlottesville. D/I: August 12, 2017

Robert Sanchez Turner filed suit in the United State District Court for the Western District of Virginia on August 31, 2017 against City Police Chief Al Thomas, Jr., the City of Charlottesville and W. Steven Flaherty, Virginia State Police Superintendent, alleging personal injury due to inaction of police officers at the Unite the Right rally on August 12, 2017 in the City's downtown area. Plaintiff is seeking unspecified monetary damages, punitive damages, attorney's fees and expenses. VRSA was notified and hired the law firm of Zunka, Milnor and Carter as defense counsel. The City filed a Motion to Dismiss for failure to state a claim, and the Court granted the City's motion by Order entered May 29, 2018. The Plaintiff's Notice of Appeal to the Fourth Circuit Court of Appeals was filed on June 28, 2018, and the Appeals Court upheld the lower court's dismissal. A Petition for a Writ of Certiorari has been filed with the United States Supreme Court.

Jason Kessler, et al. v. City of Charlottesville, et al.

On December 7, 2018 Jason Kessler and three co-plaintiffs filed a lawsuit against the City of Charlottesville, Virginia, former City Police Chief Al Thomas, and Virginia State Police Lieutenant Becky Crannis-Curl, in the U.S. District Court for the Western District of Virginia. The lawsuit ostensibly was brought under 28 USC §§2201 and 2202 and 42 USC §1983, alleging that the Plaintiffs' constitutional rights were violated in August 2017 after a "Unite the Right" rally that they sponsored resulted in mayhem, violence and death. The case was voluntarily withdrawn by the Plaintiffs on February 28, 2019 and re-filed on September 6, 2019 styled as Jason Kessler and David Matthew Parrot v. City of Charlottesville, Tarron J. Richardson, Al S. Thomas, Becky Crannis-Curl, and Maurice Jones. There are several Motions to Dismiss pending in this case, and an Order was entered on September 6, 2019 staying all deadlines for pre-trial discovery until resolution of the motions to dismiss. To the extent that their theories of recovery include "failure to protect" arguments, those claims should be dismissed, consistent with the result in the *Turner* case (see preceding paragraph above).

Antoine Poteat v. Detective Lee Gibson.

Antoine Poteat filed a Complaint in the U.S. District Court for the District of Maryland Greenbelt, alleging that City Police Detective Lee Gibson in 2014 made false statements that resulted in his arrest in Maryland and unlawful detention of Plaintiff in Virginia. The charges against Plaintiff in Virginia were subsequently dismissed on July 14, 2014. Plaintiff is asking for \$600,000 in compensatory and punitive damages. The suit was reported to VRSA and the law firm of Bancroft, McGavin, Horvath & Judkins in northern Virginia was hired as defense counsel for Detective Gibson. The case was dismissed by the U.S. District Court, and no appeal was ever filed.

John Peter Miska v. City D/I: August 11, 2018

John Miska filed suit in the U.S. District Court (Western District) on or about February 13, 2019 alleging violation of his civil rights (unreasonable search and seizure, false arrest) on August 11, 2018 when the City was under a state of emergency. The General District Court dismissed the charges against Miska (possession of illegal items under City Code Sec. 18-25), stating the ordinance was unreasonably overbroad and violated due process. The suit was referred to the City's insurer, and the law firm of Zunka, Milnor & Carter was hired to defend the City. Settlement negotiations were successful, and the case was dismissed on October 22, 2019.

Shulls Wrecker v. Larry Sipe, et al. D/I: October 2014

Tommy Shulls of Shulls Wrecker filed suit in Albemarle County Circuit Court on June 4, 2018 against two other wrecker businesses and Larry Sipe, a part-time Community Services Officer (CSO) with the City Police Department. The suit alleges that CSO Sipe conspired with the other defendants to divert towing requests from Shulls to the other defendants. The Plaintiff is asking for compensatory and punitive damages, and attorney's fees, totaling almost \$7 million dollars. The suit was referred to VRSA, and the law firm of Zunka, Milnor & Carter was hired as defense counsel. The Court dismissed City employee Larry Sipe as a defendant on March 6, 2019.

Stacey Campbell v. Michael Murphy, City Manager

Stacey Campbell filed a Warrant in Debt in Charlottesville General District Court, naming "Charlottesville Va City Manager Mike Murphy" as the defendant, with a return date of November 13, 2018. The warrant does not list any monetary damages. She alleges the City does not provide enough safe and affordable housing for low-income individuals. VRSA was notified and the firm of Zunka, Milnor and Carter was hired as defense counsel. The Warrant in Debt was dismissed in the Charlottesville General District Court on November 13, 2018.

Jamar Antwaun Gladden. D/I: July 29, 2015

Jamar Gladden filed a *pro se* lawsuit on May 9, 2018 in the U.S. District Court for the Western District (Roanoke), alleging that City Police Detective R. A. Oberholzer and other unknown officers assaulted him while in the arrest process. Gladden is requesting compensatory and punitive damages in an unknown amount. Detective Oberholzer was not served with the Complaint until February 19, 2019. Gladden filed suit previously asserting the same allegations, but his claim was dismissed by the Court without prejudice. VRSA was notified of the suit, and has hired the law firm of Zunka, Carter & Milnor to defend Detective Oberholzer. The magistrate judge made a recommendation to the General District Court judge to dismiss this case, agreeing with defense counsel that the statute of limitations had run. The Plaintiff argues he had three (3) additional days to file his complaint, and has petitioned the federal court for reconsideration. In my opinion, if there is a judgment or settlement of the claims against the City it will not exceed the limits of the City's insurance coverage.

Tanesha Hudson v. City. D/I: August 12, 2017

Tanesha Hudson filed suit *pro se* against the City on August 12, 2019 in the Charlottesville Circuit Court alleging City police officers refused to provide protection to Plaintiff after she reported several acts of violence against her by unknown persons participating in the Unite the Right rally. Hudson also claims her constitutional rights were violated, and is demanding \$400,000 in damages. VRSA was notified of the lawsuit and the firm of Zunka, Milnor and Carter was hired as defense counsel. We believe there are valid defenses in this action, and there is a judgment or settlement of the suit against the City it will not exceed the limits of the City's insurance coverage.

Lakeisha Byers v. City. D/I: December 19, 2016

Lakeisha Byers filed suit in Charlottesville Circuit Court against the City of Charlottesville on July 25, 2019, stating she was severely injured on December 19, 2016 because of alleged inadequate street maintenance by the City. She tripped on a "bulge of cement" in Market Street near a bus stop shelter. Byers is demanding \$5,000,000 in compensatory damages. VRSA was notified of the suit, and has hired Zunka, Milnor & Carter to defend the City. The trial is scheduled for November 4, 2019. We believe there are valid defenses in this action, and if there is a judgment or settlement of the suit against the City it will not exceed the limits of the City's insurance coverage.

The ongoing defense of many of these suits is being handled by outside counsel, who we have identified. Those attorneys can recite more details about the amount of exposure, if any, these suits carry for the City.

B. CLAIMS ONLY**Phillip Turner.** D/I: May 26, 2016

Phillip Turner, a city Transit Division employee, filed an OSHA claim against the City for retaliation (discrimination). VRSA was notified and they retained Zunka, Milnor & Carter (Elizabeth Southall, Esq.) to represent the City. Ms. Southall filed a position statement on behalf of the City. A settlement agreement was entered into in September 2019.

Stephanie Whindleton. D/I: May 10, 2019

Stephanie Whindleton was an employee of the Charlottesville Department of Social Services as a Child Protective Services Investigator. She was terminated as an employee because she divulged confidential information to outside parties. After the City's action was upheld at a grievance hearing, Whindleton filed a racial discrimination charge with the EEOC. The parties were ordered to submit to mediation, which was unsuccessful in resolving the charge. The EEOC will proceed with an investigation into Whindleton's allegations.

Kristin Morgan. D/I: October 4, 2018

Kristin Morgan, through her attorney Jonathan Wren, filed a Notice of Claim dated January 10, 2019 against the City claiming she suffered serious personal injury when she tripped on a section of sidewalk at the intersection of Grady Avenue and Preston Avenue. The Notice of Claim was referred to VRSA for investigation and possible settlement negotiations. Any judgment or settlement of the claim against the City will not exceed the limits of the City's insurance coverage.

Patrick McKenzie. D/I: March 15, 2018

Patrick McKenzie was crossing Market Street and was struck by a City vehicle driven by employee Alex Ikefuna. Mr. Ikefuna pled guilty to a charge of Failure to Yield to Pedestrians on August 16, 2018. A Notice of Claim dated April 27, 2018 was filed by McKenzie's attorney, Jonathan Wren, asserting his claim for personal injury as a result of the accident. The claim was referred to VRSA for investigation and possible settlement negotiations. Any judgment or settlement of the claim will not exceed the limits of the City's insurance coverage.

Quadir Azim Pettaway. D/I: October 24, 2018

Quadir Pettaway, a student at a local private school, was injured while volunteering for a service project (clearing a trail through a bamboo forest) on the property at 1170 River Road owned by the VFW. The Notice of Claim dated March 21, 2019 alleges it was an event sponsored by the City Parks and Recreation Department, but the Parks Department denies sponsoring this project or having any supervisory responsibility for it. The claim was referred to VRSA. Any judgment or settlement of the claim will not exceed the limits of the City's insurance coverage.

Tytavius Gray and Carrie Smith. D/I: March 7, 2019

Tytavius Gray and Carrie Smith were allegedly injured when their vehicle was struck on Water Street by a City bus driven by Delphine Snowden. A separate Notice of Claim was filed for each claimant, both dated April 9, 2019. The claims were referred to VRSA for investigation and possible settlement negotiations. Any judgment or settlement of either claim will not exceed the limits of the City's insurance coverage.

Brianna Green. D/I: March 11, 2019

Brianna Green, age 29, was attacked by a dog while visiting Tonsler Park, a City-owned park on Cherry Avenue, and suffered an injury requiring surgery to repair a finger. The dog belonged to another person using the park. The claim was referred to VRSA for investigation. The City has valid defenses to this claim, and if there is a judgment or settlement of the claim against the City it will not exceed the limits of the City's insurance coverage.

Curtel Garrett. DI: August 27, 2019

Curtel Garrett complained to Charlottesville Area Transit that a Transit bus driver did not secure his wheelchair properly and it fell over onto him while the bus was making a turn. Mr. Garrett has submitted a demand letter dated October 10, 2019 for \$16,000 in damages (personal injury, pain and suffering, psychological damage and future medical costs). The claim has been referred to Virginia Risk Sharing Association for investigation and possible settlement negotiation. Any settlement of the claim against the City it will not exceed the limits of the City's insurance coverage.

Pursuant to Mr. Cullinan's request, by this letter I confirm his representation to you that there are no unasserted claims and assessments that I consider probable of assertion and, if asserted, to have at least a reasonable possibility of an unfavorable outcome.

The information set forth herein is current as of the date of this letter, except as otherwise noted, and we disclaim any undertaking to advise you of changes which thereafter may be brought to our attention. The City Attorney's Office is a department of City government and represents the City as a municipal corporation. No fees for legal services or expenses are charged to the City of Charlottesville.

This response is limited by and is to be construed in accordance with the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December, 1975). Without limiting the generality of the foregoing, this response is limited to matters which have been given substantive attention by our office in the form of legal consultation and, where appropriate, legal representation, for the time period covered by this letter.

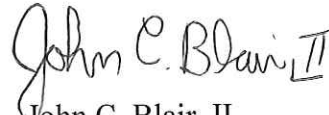
This response is solely for your information in connection with your audit of the financial condition of the City and is not to be quoted or otherwise referred to in any financial statement or other document, in whole or in part, or furnished to any other party or agency without our prior written consent. Notwithstanding such limitation, this response may be properly furnished to others in compliance with court process or when necessary in order to defend you against a challenge of the audit by the City or a regulatory agency, provided that we are given written notice of the circumstances at least twenty days before the response is to be furnished to others, or as long in advance as possible if the situation does not permit such period of notice.

Pursuant to Mr. Cullinan's request, we wish to confirm as correct our understanding that whenever, in the course of performing legal services for the City, any attorney in this office forms a professional conclusion that the City must disclose or consider disclosing an unasserted possible claim or assessment, we will so advise the City Manager and Director of Finance and

will consult with them concerning the question of such disclosure and the applicable requirements of the Statement of Financial Accounting Standards No. 5 of the AICPA Professional Standards.

Please feel free to contact me if there are any questions regarding the contents of this letter, or if any additional information is needed.

Sincerely yours,


John C. Blair, II
City Attorney

cc: City Council
Dr. Tarron Richardson, City Manager
Chris Cullinan, Director of Finance
Laura Ellis, Risk Manager

(all by electronic mail)